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THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF TEXAS

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FORT WORTH DIVISION

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6 UNITED STATES OF AMERICA, )

)

7 Government, )

CASE NO. 4:21-cr-289-O

)

8 VS. )

FORT WORTH, TEXAS

)

9 HOLLIS MORRISON GREENLAW )

(1), BENJAMIN LEE WISSINK )

10 (2), CARA DELIN OBERT (3), )

JEFFREY BRANDON JESTER )

11 (4), )

)

12 Defendants. )

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January 12, 2022

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VOLUME 2

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TRANSCRIPT OF OPENING STATEMENTS  
BEFORE THE HONORABLE REED C. O'CONNOR  
UNITED STATES DISTRICT COURT JUDGE

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## P R O C E E D I N G S

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(Following is opening statements.)

THE COURT: So with that said, I'm going to turn the floor over to Miss Eggers.

MS. EGGERS: Yes, your Honor.

Thank you, your Honor. May it please the Court, Counsel.

I expect the evidence is going to show this, Defendant Greenlaw, who's seated right there, him and another man formed what we will call the UDF entities as a whole.

First one, UDF I, basic business model was investors would give their money entrusted to Mr. Greenlaw and his business partner and the front persons that work with them. They were then to loan this money to developers. The developers, sort of was using it like a bank, the developers then would use the money to improve pieces of real property to get them to a place where they could be sold.

And then what they would do, the developers is, pay back the loans to Defendant Greenlaw. And any interest that they paid back, that was going to be the distributions paid to the investors. Makes sense. That's how it started.

They formed UDF III, and they told the members of

1 the general public, they filed filings for the SEC, filings  
2 that Defendant Obert submitted to the SEC, that Defendant  
3 Greenlaw signed off on, that Defendant Wissink signed off  
4 on.

5 And then this one, UDF III, they told the  
6 investing public that the distributions that they were going  
7 to be paid was going to be cash available for distribution  
8 are the funds received by UDF III from operations. That  
9 interest the developers were paying back on these loans.  
10 That's the basic idea.

11 There was a snag. The snag was this, the  
12 developers were not paying back their loans quickly enough.  
13 They weren't paying back their loans quickly enough, and  
14 although the defendants were never required to pay even one  
15 dollar in distribution, they did.

16 Because the developers were not paying back the  
17 loans quickly enough, the defendants formed UDF IV. So what  
18 did they do then with UDF IV? Those new investors that  
19 entrusted their money to defendants Greenlaw, Obert,  
20 Wissink, and another man, they took those people's money.

21 UDF IV's investors' money. They moved it around a  
22 number of bank accounts. And then what did they do? They  
23 paid distributions to those earlier investors. Well, that  
24 wasn't enough either, because the developers still were not  
25 paying those loans back enough, fast enough.

1                   So what did they do then? They made a strategic  
2 decision to create UDF V. And when they created UDF V, they  
3 filed filings with the SEC that said this, UDF V will not  
4 participate in any investment with its advisor entities or  
5 their affiliates.

6                   UDF V will not participate in any investment with  
7 its advisor entities or their affiliates.

8                   UDF V will not participate in any investments with  
9 its advisor entities or affiliates, including fire fund  
10 entities.

11                  UDF V shall not sell any loan to, acquire any loan  
12 from, or participate in any loan with those prior UDF  
13 entities.

14                  UDF V shall not sell any asset to acquire any  
15 asset from, participate with any of the limited partnerships  
16 that were affilitated.

17                  UDF V will not make loans to participate in real  
18 estate investments with or provide credit enhancements for  
19 its affiliates for those prior UDF funds, its cosponsors,  
20 advisor entities, asset managers, or the prior UDF entities.

21                  And UDF V intends to use substantially all of the  
22 net proceeds to originate, purchase, and hold for investment  
23 secured loans. That's what the defendants filed with the  
24 SEC.

25                  Defendant Greenlaw did sort of a sales pitch.

1 He'd go around to brokers and dealers and he'd go out of his  
2 way, along with Defendant Wissink and Defendant Obert,  
3 they'd go out of their way when they were soliciting new  
4 investors for UDF V, and say, we will not engage in  
5 affiliate transactions.

6 He didn't have to do that but he did. What I  
7 expect you're going to hear is the reason the defendants  
8 made that strategic decision is they are some  
9 broker/dealers, some financial advisors that will not allow  
10 such an offering, a fund to be on their platform. They  
11 would not offer that to their client investors.

12 So because they had run out of money for UDF IV,  
13 they needed new investors, they opened up a new pool.  
14 That's why we're here. We're here because of what they did  
15 with the money, and you are going to see a lot of financial  
16 tracing in this case.

17 We're also here because along the way, the  
18 defendants obtained loans from financial institutions, brick  
19 and mortar banks, and in those loans that they obtained,  
20 they made representations.

21 For instance, one loan they obtained from Capital  
22 Bank, they told the bank that it would not -- what it would  
23 do specifically with the money that it obtained.

24 They did not disclose to Capital Bank that they  
25 were actually going to get money from Capital Bank for a

1 loan by UDF IV so they could solely use it to pay investors,  
2 distributions in UDF III. They hid things from the banks.  
3 They hid things from the public filings.

4 Now, along the way, one of their two biggest  
5 broker/developers, a company by the name of Buffington, in  
6 September of 2014 Blake Buffington told Defendant Greenlaw,  
7 Defendant Wissink, and Defendant Jester, point blank, we  
8 can't do this anymore.

9 The interest that is accruing on our loans with  
10 you, on UDF I, UDF III, and UDF IV, is over \$2,000,000 a  
11 month. It is not feasibly possible for us to move forward;  
12 we need to wind down this relationship.

13 The defendants never told the investing public  
14 that. The Defendants never told their auditors that. They  
15 hid that information from their auditors.

16 So what happens then? Not long after, their  
17 outside auditor, you are going to learn about auditing,  
18 publicly filed companies, they have to have audits for their  
19 financial statements, they have to have an outside auditor.  
20 The auditor asks for cash flow projections.

21 They ask for that from Defendant Jester. He was  
22 the one that was supposed to get it to them. What did  
23 Defendant Jester do? He goes to Mr. Buffington, and he asks  
24 Mr. Buffington's company, give me your cash flow  
25 projections.

1 Well, it wasn't good enough, see. Like Blake  
2 Buffington said, that loan, they can never pay them back.  
3 They gave them the cash flow projections, Buffington did.

4 So what does Defendant Jester do? Him and another  
5 guy by the name of Gilpatrick, they start adding projects on  
6 there. They start manipulating the numbers to make it look  
7 like it's going to pay off.

8 Why did they do that? Because they knew good and  
9 well they -- if they told their outside auditor that our  
10 second to largest borrower is telling us that we can't pay  
11 it back, the auditor would have to disclose that.

12 You're going to hear the various roles. I  
13 describe the Defendant Greenlaw, you're going to hear he  
14 would do a lot of the sales pitching.

15 You are going to hear Defendant Wissink, he was  
16 the guy moving the money. He's the one that, every month  
17 when this company called DST would say, hey, the  
18 distributions for UDF III this month are \$2,000,000,  
19 Defendant Wissink would send directions to various ladies in  
20 their office to do this, move the money from here, move the  
21 money from there.

22 Defendant Jester, what was he doing? He would go  
23 to those borrowers, like Blake Buffington, and he would  
24 cause them to fill out paperwork to make it look like they  
25 actually were asking for the money, but they weren't.

1           The only reason the money was being moved was so  
2           they could pay distributions to those earlier investors,  
3           that's it.

4           What was Defendant Obert's role in this? She's  
5           the one on each and every one of the SEC filings. She's the  
6           one on the SEC filing that says UDF V will not do all those  
7           things I went through.

8           I expect when you get to the end of this case,  
9           ladies and gentlemen, the evidence is going to show the  
10          scheme they were involved in for that five years, for five  
11          years the distributions they paid out to the UDF III was  
12          approximately 133,000,000, but because developers were not  
13          paying the loans back fast enough, because the interest was  
14          accruing so high, the defendants caused money to come from  
15          UDF IV and UDF V subsequent investors to the tune of  
16          \$79,000,000 of investors in UDF IV, their money was moved  
17          around through multiple bank accounts, and then paid to UDF  
18          III's investors. That's from UDF IV to pay UDF III's  
19          investors, the earlier investors.

20          UDF V, approximately \$4,000,000 went from the  
21          investors' money, went from their bank accounts, gets  
22          entrusted to the defendants. And then what do they do, they  
23          cause it to go out the door to be paid in distributions to  
24          those early investors.

25          I expect the evidence goes to show this is much

1 like a Ponzi scheme. And at the conclusion of this trial,  
2 I'm going to ask you to find the defendants guilty.

3 THE COURT: Thank you.

4 Mr. Pelletier.

5 MR. PELLETIER: If it pleases the Court.

6 Judge, may I have a moment to set up?

7 Thank you, your Honor. Please the Court.

8 THE COURT: Yes.

9 MR. PELLETIER: Ladies and gentlemen of the jury,  
10 the government has got this wrong. The story they just told  
11 you, it's not true. It's built on sand. And for the same  
12 reason constructors, builders, home builders won't build on  
13 sand, it won't hold the structure, it won't hold the truth  
14 here. Why is that?

15 Well, they got it wrong, ladies and gentlemen of  
16 the jury, because they don't understand this business. And  
17 more importantly, as you will see during this trial, they've  
18 chosen not to try to understand this business stand.

19 MS. EGGERS: Your Honor, I'm going to object to  
20 argument.

21 THE COURT: Overruled.

22 MR. PELLETIER: They will tell you bits and pieces  
23 of the story. Their theory, but not the whole story. But  
24 you need all the facts to find the truth. And the truth is,  
25 you will see from the evidence is, that you UDF is a real

1 business with real employees, making real loans for the  
2 development of hundreds, hundreds of real real estate  
3 communities here in North Texas and in Central Texas for the  
4 past 18 years. That's right, 18 years.

5 You're going to hear that, to this day, UDF  
6 continues to finance successful real estate developments,  
7 much needed here in Northern Central Texas and they continue  
8 to do so today.

9 Now, the government says that the charged criminal  
10 conduct ended in 2015, but you will hear that UDF continues  
11 to this day to conduct its financing business in much the  
12 very same way as they always have, open and transparent, no  
13 cheating, no scheme to defraud, no stealing.

14 Ladies and gentlemen, this is a disclosure case,  
15 and you will see through the evidence that UDF discloses  
16 what they do and they say what they do. And they properly  
17 account, as you will see, for every single penny.

18 As I said, the evidence will show that the  
19 government got this wrong, and they carry the burden of  
20 proof here, as the judge has told you. They must prove the  
21 elements of the charged crimes beyond and to the exclusion  
22 of every reasonable doubt.

23 This, ladies and gentlemen, as the Court has  
24 explained, is a very heavy burden. It's the heaviest burden  
25 in our judicial system. And we believe that the judge will

1 instruct you that the government must prove beyond its  
2 exclusion of any reasonable doubt that these UDF executives  
3 violated the law by intentionally devising a scheme to --

4 MS. EGGERS: Your Honor, object to argument.

5 THE COURT: Overruled.

6 MR. PELLETIER: -- intentionally devising a scheme  
7 to deprive UDF investors of money or property, and that they  
8 intentionally made material or false statements, and that  
9 they specifically intended to mislead or injure investors of  
10 UDF III, UDF IV, and UDF V.

11 And they cannot meet this burden because the  
12 evidence, their story, their theory, is simply not true.  
13 And you know what you won't hear from this witness stand?  
14 You won't hear any, any witness, or any credible witness  
15 come in here and swear under oath that any of these UDF  
16 executives schemed to deprive anyone of anything or  
17 purposefully mislead anyone.

18 In fact, they did the exact opposite of what  
19 criminals do. They told investors exactly what they did and  
20 how they did it. Investors were fully aware of the nature  
21 of UDF's business and all of the investing risk because they  
22 were fully disclosed.

23 Now, I'm sorry, my name is Paul Pelletier and I,  
24 along with Rose Romero, have the privilege of representing  
25 Hollis Greenlaw, who is the CEO of the UDF companies.

1 I want to thank you in advance for your time and  
2 attention in this trial. I don't have to tell you how very  
3 important this is for our clients.

4 I also want to just tell you, on a personal note,  
5 I tend to speak loud. And I'm not yelling. I'm not mad. I  
6 tend to speak loud, but I grew up with seven sisters so I  
7 had to learn how to speak loud in order to be heard. Okay?  
8 So don't take umbrage of the depth of my voice.

9 So you're going to hear that it was the vision of  
10 UDF and Hollis Greenlaw in particular that has fulfilled the  
11 funding demands of developers, home builders in Texas,  
12 especially after the banks stopped lending to the developers  
13 in 2008. And you will also see that Hollis Greenlaw did  
14 another thing very well, he hired good people.

15 Now, the evidence will show that UDF provided  
16 critical funding that was essential to the development of  
17 these Texas communities.

18 Now, it's a simple but sophisticated business.  
19 There's no magic. It's simple but sophisticated, and we're  
20 going to tell you how it works, and the evidence will show  
21 that.

22 It all starts with this, it all starts with an  
23 acre of land. Now, of course, we're talking about hundreds  
24 of acres, because we are talking about communities, right,  
25 with hundreds and hundreds of houses.

1 And that acre of land, I'm sorry, my -- the  
2 example we're going to show you, that acre of land will sell  
3 for \$10,000 an acre and developers will buy hundreds -- a  
4 hundred acres or 200 acres at a time.

5 Over time, through the development process, that  
6 acre will be split into four lots. By the time they sell  
7 these lots to developers, excuse me, to home builders, those  
8 lots will be sold for anywhere upwards of \$60,000.

9 So the effort of development and financing of  
10 development is to get from here, \$10,000 an acre to here,  
11 which is \$240,000 an acre. So you can see it's an  
12 enterprise that involves the development of properties that  
13 consumes cash.

14 Now, let me tell you about a little bit about how  
15 this happens.

16 Your Honor, I apologize that I'm blocking you.

17 I will try to see if this will hold up here. So  
18 this is the development life cycle. I'm trying not to block  
19 you, I'm sorry if I do. So this is the land acquisition  
20 that I'm talking about. Now, developers will borrow the  
21 money to acquire land and UDF III will lend it.

22 And then, through each of these processes, the  
23 entire process, you're going to hear about all the  
24 entitlements process. You will be sick of hearing about  
25 entitlements, but they're very, very, very valuable.

1 And then there's going to be lot construction.

2 And then finally, there's going to be finished lots where  
3 home builders are going to pay, are going to pay \$60,000 an  
4 acre, a lot, for these pieces of property.

5 All these parts of the construction process  
6 consume cash. There's nobody putting any cash in except for  
7 financiers. And that's what UDF does. UDF III in  
8 particular started in 2006 to provide the necessary funding.

9 Now, banks in 2006 were lending as well. So you  
10 will hear UDF was coming in at a, what we call, a second  
11 level. Okay? So they would fund at a second level, but  
12 they're funding these steps. They're funding operations.  
13 They're funding overhead. They're funding all this process  
14 with the hopes of getting where we're selling an acre at  
15 240,000.

16 But this process can take up to 15 years for every  
17 phase of the development. If you've ever seen the  
18 developments around here, they're built one phase at a time,  
19 right? So every one takes this same process, and this takes  
20 a lot of money. A lot of money.

21 And that's what UDF III does. And then in 2008  
22 something drastic happened in this country and we all still  
23 remember it, right? It was the great financial crisis and  
24 the banks pulled out of lending.

25 So the next stage of lending is this part of

1 lending where you lend the home developers to get from the  
2 finished lots, the houses, and then to build the houses.  
3 And that's what the banks did, they abandoned it.

4 So UDF, because they're keen and good at what they  
5 do, said, we will take the banks -- we will take the place  
6 of the banks and we will finance that, and that's how they  
7 created UDF IV.

8 So when the prosecutor tells you that the evidence  
9 is going to show that UDF IV was broke -- that's why they  
10 created UDF IV, it has nothing to do with it. I will tell  
11 you why UDF IV wasn't broke. This process here creates  
12 great, great value. Great value.

13 And UDF has a lien interest or pledged interest in  
14 all the value created. That's how they -- now, can you sell  
15 that? Not easily. It's illiquid value, but just because  
16 they're illiquid, they have what's called, as you know, they  
17 have solvency, right? So they're asset rich. They're rich  
18 in assets.

19 So all they do is have financing to continue this  
20 and use their assets to borrow so that they can pay the  
21 developers, pay the investors, and keep the process going.

22 Because, remember, they developed in excess of 250  
23 communities here in Texas and continue to do so. They're  
24 still doing it. That's over 90,000 houses. 90,000 houses.  
25 That's what they're doing. There's nobody broke.

1           There's nobody that doesn't -- that is lying to  
2 investors. These people are conducting a business and  
3 they're very, very, very good at it, and you will hear that  
4 evidence.

5           THE COURT: You've used 10 minutes.

6           MR. PELLETIER: So ladies and gentlemen of the  
7 jury, in a moment I'm going to turn this over to my  
8 colleagues who continue to tell you the rest of the UDF  
9 success story, but I want you to know that when you hear all  
10 the evidence in this case, you will agree with me that the  
11 government has got this wrong.

12           Hollis Greenlaw and UDF employees and executives  
13 were indeed always innocent and should be found not guilty.  
14 Thank you for your time.

15           Thank you, your Honor.

16           THE COURT: Thank you.

17           MR. ANSLEY: Yes, your Honor.

18           May it please the Court.

19           THE COURT: Thank you.

20           MR. ANSLEY: Ladies and gentlemen, your Honor,  
21 Counsel, and clients as well, my name is Jeff Ansley, and  
22 together with Arianna Goodman, we have the pleasure of  
23 representing Brandon Jester in this case.

24           Now, first of all, I want to tell you about  
25 Brandon Jester who I have gotten to know over the last

1 several years as a person and as an individual working at  
2 United Development Fund.

3 He began at UDF in 2008 as an asset manager and  
4 served as an asset manager for a number of years at UDF  
5 before being promoted to being director of asset management  
6 in 2012. That means -- he's still there today -- that means  
7 for 14 years, including to the present, Brandon Jester has  
8 worked at UDF.

9 He's risen there and he's done that, because he's  
10 good at his job. People around him, internal and external  
11 around him, recognize that he's good at his job.

12 I want to talk to you first about what asset  
13 managers at UDF do. Generally, they work with Texas-based  
14 developers, property developers in residential space, like,  
15 Buffington, who you will hear about, like, Centurion  
16 American, who you will hear about, in helping them manage  
17 their portfolios and also manage the developments and push  
18 their projects forward as their residential projects  
19 throughout Texas are growing.

20 They do that by helping first in managing the  
21 day-to-day expenses and needs of those developers. They  
22 also do it by helping those developers grow their business,  
23 both large and small businesses.

24 And they do so also by helping the developers get  
25 access to, at a high level, cash, and the financial

1 resources necessary that, as those developers grow,  
2 therefore, their financial needs grow as well. We provide  
3 all those resources to developers and continue to do so.

4 And in doing that, that set, that third point,  
5 that is the active portfolio management that UDF is so good  
6 at, and their borrowers and developers recognize they're  
7 good at that. That's one of the reasons why we're singled  
8 out and identified and used by developers and successful  
9 developers in order to do just that.

10 The starting point for the process we're talking  
11 about, first, is to, you know, get the initial funding  
12 available to these developers. That's the project level  
13 draws, the project level funding provide.

14 These are basic invoices for services for  
15 consultants, for people who are laying pipe on locations,  
16 for people who are laying sewer lines, things like that.

17 That's the project level invoicing for which UDF  
18 provides services -- I'm sorry, provides funding for those  
19 developers to engage in.

20 That process involves the paying, the submission  
21 of invoices from the contractors in those locations, up to  
22 the asset managers, who then aggregate those invoices, send  
23 them to UDF headquarters in Grapevine, Texas, where they  
24 look at those invoices, they're approved.

25 They're ultimately sent back for payment by the

1 borrowers to those people who are engaging in brick and  
2 mortar work on these location. That is the process of  
3 project level draws.

4 But there's a second manner in which UDF assists  
5 its borrowers, its developer borrowers, and that is that  
6 high-level portfolio management assistance that they provide  
7 that is active portfolio management that distinguishes UDF  
8 from so many lenders out there.

9 And to be clear, UDF is not a bank. It's not an  
10 FDIC insured bank. Do they lend money? Do they lend funds?  
11 Absolutely. But UDF is different because they go out there  
12 and find people like Brandon Jester, find others who know  
13 the home building business, have been in that space already.

14 They come to UDF, bring that knowledge, that skill  
15 set, that expertise that is not present at a Legacy Bank,  
16 and they bring that and helping the borrowers, these  
17 developers, manage at that 30,000-foot level their  
18 portfolios and availability of funds, as they're necessary  
19 in growing these projects.

20 Let's discuss what that portfolio level funding  
21 actually looks like. But, first of all, I want to talk  
22 about what it looks like when we see these developments. I  
23 mean, we've got Centurion American. We've got Hawk's  
24 Landing.

25 From start to finish we are helping developers at

1 the very beginning of the project, before dirt is even  
2 turned, all the way to the conclusion of that project. That  
3 is what we do.

4 That's not what somebody does who's moving money  
5 from one fund to another. That's what you do when you are  
6 helping developers take a project with one type of loan and  
7 with another of type loan, develop it further, that project,  
8 to ultimately completion, like we see in those slides.

9 You'll also hear, with this portfolio level  
10 funding, that we are contractually authorized, we are  
11 expressly allowed to initiate draw requests. We will talk  
12 about draw requests in this case.

13 What that means is essentially either you're a  
14 borrower or a lender, UDF initiates a request for funding.  
15 And we have contracts that expressly show contracts with a  
16 loan agreement with Centurion American, one of our  
17 borrowers. It expressly says, expressly, that UDF has the  
18 contractual authority to initiate draw requests.

19 I don't think it could be more clear, they as the  
20 lender, can initiate that request. The borrower is not  
21 required to, absolutely not.

22 And as we see that in practice, we look at what  
23 happens with Shahan Prairie. In this instance you see Erin  
24 Richards, who was an asset manager at UDF, so that's a UDF  
25 employee, who's sending an email to Renee Mueller, who's an

1 employee at Centurion American, the borrower at the time,  
2 borrower today, saying, initiate a draw request from V, UDF  
3 5, that's one of the funds in order to pay down on UDF IV.

4 Those are two loans held by Centurion American.  
5 In other words, the same borrower, and that is, a UDF  
6 employee initiating, pursuant to that contract, that that  
7 draw request and that draw itself go from V to IV for the  
8 express purpose of what? Of paying down that IV loan.

9 There's nothing hidden about that. That could not  
10 be more transparent. That could not be more contractual.  
11 We're allowed to do that. Our borrowers know that because  
12 they sign it.

13 On top of that, because we're good at our jobs, we  
14 constantly communicate with our borrowers. We have weekly  
15 meetings with them. We're out there, at the asset manager  
16 level, at the higher levels, having weekly meetings, phone  
17 calls, emails. You will see a lot of emails. Constant  
18 communication, constant contact with our borrowers who are  
19 absolute read into what it is that we are doing.

20 There's nothing hidden about this. It could not  
21 be more transparent. It could not be more disclosed to our  
22 borrowers, to our developers, to the regulators of the SEC,  
23 and certainly to our investors.

24 When you look at it, that's because loans serve  
25 different purposes. It's a lot like refinancing. If you've

1 refinanced your house or refinanced anything, you know that  
2 you have a second loan that comes in and can replace the  
3 first loan.

4 And when that happens, that second loan which  
5 serves that different purpose of replacing the first, takes  
6 the place of the first. You may have a release of  
7 collateral, release of a lien, but that second loan comes in  
8 and replaces the first. That's simple refinancing. That's  
9 Lending 101 is what that is.

10 And that is, in large measure, what UDF does and  
11 continues to do, because different loans provided by UDF to  
12 its developer clients, as you will hear, serve different  
13 purposes.

14 UDF IV, UDF V, those funds are used in order to  
15 push projects forward for these developers, help them grow,  
16 help them become the things that we looked at a few minutes  
17 ago, which are communities here in North Texas, in Central  
18 Texas, that you can drive by and see today.

19 That is the process of active portfolio  
20 management. We're very good at it. We've been good at it  
21 for years, because we have expertise, skill set, and our  
22 clients recognize that.

23 Now, I want to talk about something that's  
24 related, but a little bit different, and that's that we also  
25 model the loan portfolios that we run. And by that, that's

1 just what portfolios we're talking about UDF V, IV, all the  
2 others.

3 We model the portfolios to see whether or not, and  
4 the individual loans in these portfolios too, to determine  
5 whether or not, from cash flow standpoint, will they pay  
6 off? Are they going to be cash positive for us? Do we have  
7 exposure? So we model those consistently.

8 And we do that in the way that any business would  
9 do it, whether it's us or whether it's Ford selling cars.  
10 We look at, what are the existing assets in that portfolio,  
11 meaning, what projects are live in play right now?

12 And then with that developer, and then based on  
13 that developers' history our expertise in the industry,  
14 based on the area we're working in North Texas, Austin, what  
15 do we project? What do we forecast? Projects in the future  
16 by that developer could do to produce revenue on that loan?

17 That again is Business 101. Every company out  
18 there does that. You will hear witnesses talk about  
19 forecasting just like that. That's what any business does.  
20 That's what Ford does. That's what UDF does as well.

21 And you will hear that we do that for the purpose  
22 of assessing the cash flow that comes from those projects,  
23 and whether or not that cash flow is sufficient to keep  
24 those loans covered and protected.

25 That is what the evidence in this case is going to

1 show. It's not going to show Ponzi-scheme payments. It's  
2 not going to show money flowing from one fund to another  
3 with no purpose.

4 It will show money flowing in different loans, but  
5 different loans serving different purposes, and that's what  
6 you're going to see in the evidence. You are going to see  
7 the draw request. Did we initiate draw requests?

8 Absolutely. Were we allowed to? Absolutely. Everybody  
9 knew it. Everybody knew it. They signed off on it.

10 Ms. Mueller didn't say, what are you talking  
11 about? She said, okay. That's because they knew. We  
12 communicate with our clients, and they're well aware. They  
13 seek us out for the skill set, this expertise reflected in  
14 draw requests just like that.

15 And because of that, you're going to see that our  
16 client, Mr. Jester, acted in nothing but good faith. He  
17 received draw requests. He sent those up the chain in the  
18 corporation, as he should. They were taken care of. They  
19 were approved or disapproved, depending what the contents  
20 were.

21 And then they were sent back to the developers for  
22 them to take care of. And then on top of that, he would  
23 participate, when appropriate, in initiating draw requests.  
24 That is what a good employee does. That is what a good  
25 company does.

1 And it was all consistently done in the context of  
2 appropriate disclosures, everybody knowing what we're doing,  
3 written contracts saying we could do these things, and a  
4 virtually constant flow of information between our borrowers  
5 and our borrower builder clients, because they knew what  
6 we're doing. We're doing all this in the light of day. And  
7 that's all it's going to show.

8 THE COURT: You've used 10 minutes.

9 MR. ANSLEY: It's going to show my client and  
10 everybody else here operated in good faith.

11 At the end of this case, I'm going to ask you to  
12 come back and return the only verdict which this evidence  
13 will support, which is not guilty. Thank you.

14 THE COURT: Thank you.

15 MR. LEWIS: May it please the Court.

16 THE COURT: Thank you.

17 MR. LEWIS: Thank you, Judge.

18 Jurors, good morning still. My name is Guy Lewis.  
19 I have the privilege of representing Ben Wissink. As the  
20 judge said, he may be up and out at times, but I will be  
21 here and arguing this case.

22 Jurors, the evidence will show that this is a case  
23 about telling the truth and UDF told the truth. The  
24 evidence will show that they were honest, they were open,  
25 they were transparent, and truthful.

1 And the evidence will show, jurors, that they got  
2 it right. They got the accounting right. They got the  
3 disclosures right. They were forthright, and they were  
4 transparent.

5 The evidence will show that they sought the advice  
6 of lawyers and accountants and other professionals. They  
7 didn't hide anything. Indeed, for six years, as the  
8 government investigated this case, UDF tried its best to  
9 cooperate.

10 And in those six years, they continued to do  
11 business, as they do today, to make loans, still working  
12 hard for their investors, all the while still telling the  
13 truth.

14 The accountants will say that, jurors, the asset  
15 managers will say this, the UDF lenders will say this, the  
16 experts will say this, the investors will say this, and the  
17 documents will reflect this.

18 As you've heard, this is a disclosure case, and as  
19 Mr. Pelletier said, the burden is on the government. And as  
20 the judge has said before, this is what the government has  
21 to prove beyond a reasonable doubt.

22 All of these, all of these parts, did we hide or  
23 misrepresent anything? The answer is no. Did we act with a  
24 specific intent to cheat or mislead anybody? Absolutely  
25 not.

1 Now, before we talk about the disclosures  
2 themselves, I want to show you some of this in my limited  
3 time this morning. I want to introduce you to Ben Wissink,  
4 the salt of the earth, born and raised in Iowa.

5 Went to the school at the University of Iowa and  
6 graduated with a degree in business. Went out, started  
7 working in the home building industry. Did that all his  
8 career. Started working at Lennar, gained additional  
9 experience, and then was recruited by, as Mr. Pelletier here  
10 said, someone who had an eye for talent, Hollis Greenlaw.

11 He worked hard to manage the finances of UDF. To  
12 work with the asset managers like Mr. Jester, liked to know  
13 the projects, to know the finances, to know what's coming in  
14 and what's going out. And why is that important, jurors?

15 Because UDF, unlike a bank that can go to the  
16 federal reserve and draw government money to make loans,  
17 they use their own money, they use investor money, they use  
18 bank loans, and they use lines of credit to then make loans  
19 to developers, all disclosed. You will see every bit of  
20 this.

21 That, of course, means that they must be, their --  
22 the management, they must do it with skill and precision,  
23 and they did. That's what the evidence will show.

24 Now, there's two important tools that you will  
25 hear about in this trial that showed why they did it so

1 good. First, is no idle cash. No idle cash. Second is  
2 Just-in-Time Financing.

3 Let's talk about no idle cash first. Fund III  
4 wasn't disclosed. The 10-K, which is the annual report that  
5 Miss Eggers was referring to that was filed with the SEC,  
6 indicates in there, we avoid the need for large idle cash  
7 reserves. Fund IV, page number, UDF, "Manages the time of  
8 cash receipts."

9 Fund V on their prospectus, which, jurors, you  
10 will see and hear is one of these documents that, if you're  
11 an investor, the company draws up, with the help of their  
12 lawyers, with the help of their accountants, with the help  
13 of all of their professionals and give the prospectus to the  
14 potential investor.

15 And in that, also, in writing, everything there,  
16 about no idle cash. We have secured a line of credit to  
17 manage the timing of our cash receipts and funding  
18 requirements.

19 Now, does this idle cash make sense? Absolutely.  
20 The last thing that investors want is for UDF to take their  
21 investment, to take their money, put it into a bank account  
22 and earn, what, in savings right now, at any time, not even  
23 1 percent.

24 Instead, they take that same investment, loan it  
25 out to developers at maybe 10, 12, 13 percent. And, of

1 course, the investors know about it. Of course, the  
2 borrower developers know about it. They don't want idle  
3 cash to be sitting in a bank account. What investor would?

4 So when the government says that UDF III or IV was  
5 broke, the evidence is not going to -- it's not going to  
6 support that.

7 The evidence will show that this shifting sand  
8 theory doesn't take into account, jurors, what was coming  
9 in, what loans were coming in, what reimbursements were  
10 coming in, payments in and out, timing, all of that, which  
11 is what a good asset -- a good financial manager does.

12 I mean, if here today I have \$5 in my pocket, but  
13 I own my house, and my brother is going to pay me back the  
14 money he owes me on Friday, I'm not broke. Fund III and UDF  
15 IV were not broke. They weren't then, they're not broke  
16 now.

17 The second important point, jurors, is the flip  
18 side of Just-in-Time Financing, which is, no idle cash, it's  
19 Just-in-Time Financing. In other words, when you hear that  
20 money was moving from account to account from V to IV or IV  
21 to III, not true.

22 Jurors, there was always a borrower in the middle  
23 of that transaction, fully disclosed, fully -- just like  
24 refinancing a house, as Mr. Ansley said. You wind up, the  
25 lien exists, the loan papers exist, the appraisals exist,

1 all fully documented.

2 Now, why does that make sense? Because if I  
3 borrow that first loan from UDF to buy the land, which is  
4 the most risky part and pay 20 percent, for example, and I  
5 could refinance it after years of development and equity and  
6 growth for 12 percent or 13 percent, jurors, that's  
7 7 percent to someone who's borrowed millions and millions,  
8 tens of millions of dollars, that means something to go from  
9 high interest rate to lower interest rate, and that's what  
10 was happening, jurors.

11 Please look at the paperwork. You're going to see  
12 a lot of it. Please look at the transactions. Please look  
13 at the disclosures.

14 Again, do the documents bear this out?  
15 Absolutely. And when the payments were made and  
16 distributions were made, again, all reflected in the  
17 documents that you're going to see, for example, UDF III at  
18 the top there, "We may fund our distribution from borrowings  
19 and the amount of distributions paid at any time do not  
20 reflect current cash flow from our investments."

21 Over and over again you're going to see this. And  
22 it's, as Mr. Pelletier said, illiquidity is not insolvency.  
23 UDF was not broke. UDF told the truth. They did nothing  
24 wrong.

25 You will hear from a lot of witnesses in this

1 case. And they're going to tell you UDF did nothing wrong.  
2 They told the truth. This was our business model. It was  
3 good for investors. It was good for developers. It was  
4 good for UDF. That's exactly why developers kept coming  
5 back.

6 I find a good bank, I go back to it. There was no  
7 conspiracy. There was no intent to defraud. Indeed, there  
8 were -- it was a real business, that did make real loans to  
9 real developers who built real homes, at the end of the day,  
10 for real families here in Texas.

11 The evidence will demonstrate, and I will ask you  
12 at the end of this case to consider all the evidence,  
13 carefully consider the Judge's instructions and return the  
14 only true and just verdict in this case, which is not guilty  
15 as to all defendants.

16 THE COURT: Thank you.

17 MR. STEPHENS: Your Honor, good morning. May it  
18 please the Court.

19 THE COURT: Yes, sir. Thank you.

20 MR. STEPHENS: Ladies and gentlemen, good morning.  
21 My name is Neal Stephens, and I represent Cara Olbert. I'm  
22 going to start about talking a little bit Cara. Cara grew  
23 up in West Texas, in Dimmitt, Texas, a small farming town.

24 She was one of the first in her family to go to  
25 college. She went to Texas Tech. She studied accounting at

1 Texas Tech and graduated in the early 1990s.

2 She was hired at UDF in 2003 and works there till  
3 this day. She is the chief financial officer of UDF IV.  
4 Along the way, Ms. Obert had two young children in the early  
5 '90s, Sy and Chloe. They have now graduated college and  
6 they're beginning their own careers. That's Cara Olbert.

7 What the evidence is going to show about Ms. Obert  
8 is that she's honest, open, and acts with integrity in  
9 everything she does.

10 I will give you one example. In February of this  
11 year, in the midst of this investigation, Ms. Obert agreed  
12 to come and meet with the prosecutors and the agents on this  
13 case and answer any and every question that they have.

14 Of all the millions of documents in this case and  
15 the millions of emails they could confront her with anything  
16 and ask her any question whatsoever. And in that interview,  
17 Miss Obert was honest, open, and trustworthy, and you will  
18 not hear any evidence to the contrary related to that  
19 interview.

20 What I want to talk to you about today is the  
21 rules of the road for UDF III, UDF IV, and UDF V. There are  
22 three funds that we're going to talk about. And those rules  
23 of the road are contained in disclosures that have already  
24 been referenced by both sides today.

25 These disclosures are available to the public and

1 to investors. They contain terms like an S11 or a  
2 prospectus or a Form 10-K or a Form 10-Q, those documents  
3 will be in evidence, both sides will refer to them, and you  
4 will be able to review them.

5 What I want to do is describe today what the  
6 differences are in UDF V, UDF III, and UDF IV. I'm going to  
7 that by describing what UDF V, which is the last fund said  
8 it would not do, contrast that against what UDF V can do,  
9 and then talk to you about what UDF III and UDF IV can do as  
10 well.

11 The reason why I want to do this is you're going  
12 to hear about a series of transactions, a lot of  
13 transactions. I'm trying to give you a framework by which  
14 you can analyze the evidence so you can reach an accurate  
15 verdict.

16 What I want you to think about, as these  
17 transactions are being discussed, is first, identify the  
18 correct fund. Which fund are we speaking of? Are we  
19 speaking of UDF III, UDF IV or UDF V?

20 And then apply the correct rules of road for that  
21 fund, which will be discussed by witnesses on the witness  
22 stand to you. And then ask this question, did the UDF fund  
23 follow its rules of the road?

24 The evidence is going to show that they did and  
25 that there is no crime here. So let me start by talking

1 about what UDF V said it would not do. UDF V said it would  
2 not originate loans, participate in loans, or provide credit  
3 enhancements to affiliates. And there are disclosures that  
4 lay that out. We will go through that at trial.

5 So an affiliate. An affiliate is defined in UDF's  
6 disclosures, and for our purposes, basically what it means  
7 is that another UDF entity, such as, UDF III or UDF IV  
8 qualifies as an affiliate.

9 So what UDF V was saying is UDF will not originate  
10 a loan, participate in a loan or provide a credit  
11 enhancement to UDF III or to UDF IV.

12 What the evidence is going to show is that UDF V  
13 never did any of those things. It's a sample set in total  
14 of eight loans. They're all structured similarly. None of  
15 them are an originating loan, participating loan or  
16 providing a credit enhancement to one of the other UDF  
17 funds.

18 So what can UDF V do? What I want to focus on  
19 today is that UDF V can originate loans with common  
20 borrowers. They can originate a loan with a borrower that  
21 has a loan with UDF III or UDF IV.

22 According to the disclosures, that's fine. That's  
23 okay. And you're going to see documents in this case,  
24 here's one from SK Research and one from Mick & Associates.  
25 These are analysts that study disclosures and summarize them

1 for investors. And what does SK Research say? Well, they  
2 say the company is not -- the company being UDF V --

3 MS. EGGERS: Your Honor, I'm going to object, if  
4 we may approach? I'm sorry.

5 THE COURT: Okay.

6 MR. STEPHENS: All right. Ladies and gentlemen,  
7 let me refrain where I was on this slide. What I'm going to  
8 talk about is SK Research. What we're talking about again  
9 is the concept of common borrowers and UDF V being allowed  
10 to loan to common borrowers.

11 What SK Research does, after analyzing all the  
12 disclosures as UDF V is beginning to operate is it says the  
13 following, the company, which is UDF V, is not prohibited  
14 from lending to borrowers of prior UDF-sponsored programs.  
15 That would be, for example, UDF III and UDF IV.

16 And then they cite an example, Frisco 113. That's  
17 the first loan in UDF V. It's the 9001 loan that you are  
18 going to hear about. Frisco 113 is a Centurion project, and  
19 Centurion had loans with UDF III and UDF IV. They're  
20 describing that it's a refinance of the borrowers' land  
21 acquisition of 81 acres to develop it into single-family  
22 residential lots.

23 That's what Mr. Pelletier was suggesting to you  
24 earlier where you have the initial loan for land  
25 acquisition, but then you're going to land construction.

1 You need more financing. That's in our disclosures and  
2 that's okay.

3 So now let me transition and talk about what UDF  
4 III and IV can do so you understand the rules of the road  
5 for III and IV. And what the concept that I want to focus  
6 you on is the fourth bullet point, that UDF IV could  
7 refinance UDF III loans, to lower the finance cost, again,  
8 for a common borrower. So there's going to be common  
9 borrowers between III and IV. That's okay.

10 And here's the disclosure on top from UDF III and  
11 down below for UDF IV, both laying out there's going to be  
12 this refinancing concept. It's anticipating, the market  
13 knows it.

14 The UDF IV one says, our asset manager manages the  
15 sale or refinancing of loans and investments by and between  
16 United Development programs. What that's saying is there  
17 could be refinancing transactions between UDF IV and UDF  
18 III. UDF III loan is about 15 percent, typically, that's  
19 what the evidence is going to show. UDF IV loan is at about  
20 13 percent. It helps the borrower to reduce their cost of  
21 funds.

22 So let me transition to this slide here because  
23 it's key to the case. This is a UDF V loan, as an example.  
24 What the UDF V investors want? They want their money to be  
25 lent out so it can start earning that 13 percent interest

1 that I mentioned.

2 So when UDF V is going to issue a new loan, it's  
3 going to go to a common borrower. That common borrower is  
4 going to take some of the proceeds of that loan and start  
5 developing the projects in that next phase to try to get it  
6 to where you get finished lots out so homebuilders can come  
7 build after land acquisition.

8 But a portion of that loan, it has to pay off the  
9 original land acquisition loan. You will see that original  
10 land acquisition loan will have been held either by UDF III  
11 or IV.

12 So the UDF III and IV investors in this loan  
13 scenario are going to benefit because their loan just got  
14 repaid, and when their loan gets repaid, they now have funds  
15 available. They've got funds available to lend. So they  
16 can send out a new loan and start earning interest on  
17 another UDF III loan, for example, or they can pay  
18 distribution because they've just got the money coming in.  
19 That's good. It's a benefit.

20 What they need to do though is they now have been  
21 paid off, and this common borrower doesn't owe them any more  
22 money. So they have a lien on the property which they need  
23 to release. So they release the lien. Who needs the lien?

24 Well, it's the UDF V investors and UDF V investors  
25 need the lien, because they've just lent money to the common

1 borrow and that secures this land and this investment for  
2 them.

3 It is a massive benefit for these UDF V investors  
4 to have that lien on the property, because it's going to  
5 secure that the common borrower is going to pay them.

6 So in this situation, everyone benefits. Okay?  
7 So what I want to get across is this, because I'm going to  
8 use this slide.

9 What the flaw in the government's theory is, is  
10 the government is saying that the investors on this side in  
11 a V transaction or on this side in a IV to III transaction,  
12 that these individuals schemed to deprive them of money or  
13 property.

14 Well, what the government does is they ignore all  
15 the benefits that are flowing from the right side of this  
16 chart to the left side of this chart. They don't consider  
17 that. It's a flawed investigation.

18 You have to consider the benefits coming across  
19 when you're trying to analyze whether these UDF executives  
20 acted in good faith, acted openly and transparently, and  
21 what they did was legal.

22 Everyone is benefiting from this, but you're only  
23 seeing half of the picture. So it's our job to demonstrate  
24 to you that you're not seeing the whole picture. When all  
25 the evidence is in, and we'll get this on cross-examination

1 of their witnesses, there's only one conclusion, that these  
2 individuals acted in good faith.

3 They acted openly, transparently, with integrity;  
4 there is no crime here. So we will stand up in closing  
5 argument and ask that you answer a verdict of not guilty on  
6 each and every count of the indictment for all four  
7 individuals.

8 Your Honor, thank you.

9 (Opening statements concluded at 12:20 p.m.)

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REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, all participants were wearing masks, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 15th day of January, 2022.

\_\_\_\_\_/s/ Zoie Williams\_\_\_\_\_  
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